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April 7, 2010

**Nancy H. Sutley**  
722 Jackson Place Northwest  
Washington, DC 20506-0003

**Re: Establishing and Applying Categorical Exclusions under the National Environmental Policy Act**

Dear Nancy Sutley,

On behalf of the over 175,000 members of the National Association of Home Builders (NAHB), I respectfully submit these comments in response to the *Establishing and Applying categorical Exclusions under the National Environmental Policy Act*, as published in the *Federal Register* on February 18, 2010. In particular, NAHB is interested in ensuring that the categorical exclusions normally afforded to the industry remain uninterrupted. After performing an analysis on the proposed guidance, NAHB applauds CEQ for maintaining existing requirements and not adding additional qualifying requirements to categorical exclusions.

NAHB's membership consists of individuals and firms who not only develop land and construct single and multifamily homes, but complete light commercial projects as well. While our members are committed to environmental protection and species conservation, oftentimes well-intentioned policies, policy revisions, clarifications and actions by regulatory agencies result in plans and programs that fail to strike the proper balance between conservation goals and needed economic growth. In these instances, our members are faced with increased costs attributed to project mitigation, delay, modification, or even termination.

**Existing Exclusions**

Today's guidance offers new oversight, review and evaluation suggestions on existing categorical exclusions, but fails to fully explain the need and the benefits of such actions. Despite presenting its rationale in the "Public Engagement and Disclosure" section of the document, NAHB is concerned that CEQ has not provided a full explanation of the benefits associated with increased oversight and review. Reviewing a previously awarded categorical exclusion makes sense when there is evidence of procedural changes or another significant need. General systematic review of all categorical exclusions may become a strain and waste of valuable financial and staff resources. Rather than making general assumptions to substantiate the guidance, CEQ should instead provide examples of categorical exclusions that have failed to live up to the standards set forth in

previous regulatory decisions. At a minimum, CEQ should identify the criteria that will be used to determine if and when an exemption should be revisited. This will better substantiate any procedural decisions made in association with existing categorical reviews.

Modifications to procedures establishing categorical exclusions, through the suggested guidance will place undue burden on not only Federal agencies, but also the entities participating in projects subject to NEPA review. The residential construction industry, due to its limited interaction with Federal government projects, has often been subject to Categorical Exclusions. Retaining the Categorical Exclusion exemption allows the industry to continue to participate and utilize federal programs and permits without the threat of additional overlapping regulatory burden. NAHB recommends CEQ retool this guidance to fully identify the benefits of this additional oversight and ways in which this guidance can reduce, not encourage regulatory burden associated with its implementation.

### **Increased Burden**

Today's draft guidance provides conflicting direction regarding the elimination of additional and unnecessary paperwork associated with collection, review, retrieval and maintenance of agency documents and administrative records associated with categorical exclusions. In Section II entitled "Establishing New Categorical Exclusions," CEQ encourages the establishment of new categorical exclusions as a means to "eliminate unnecessary paperwork" for projects that "do not have significant environmental effects". NAHB fully supports this approach. While calling for the reduction in unnecessary paperwork, however, the draft guidance simultaneously calls for the implementation of a strategy in which information associated with categorical exclusions is effectively documented and recorded for future retrieval. In Section VII entitled "Periodic Review of Agency Established Categorical Exclusions", CEQ specifically calls for redundant storage systems including electronic and hard copy filing systems. Regular review and reevaluation will require not only improvements to existing agency procedures, it will also require additional investment of resources to effectively develop and maintain proper information storage systems. In the end, CEQ's goal of reducing paperwork is effectively eliminated.

CEQ's recommended data collection and retention procedures will have to follow the requirements associated with the Paperwork Reduction Act (RPA). The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)<sup>1</sup> requires each agency to comply with the following when collecting information or controlling the amount of paperwork:

- (A) review each collection of information before submission to the Director for review under this subchapter, including--
  - (i) an evaluation of the need for the collection of information;

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<sup>1</sup> Paperwork Reduction Act. Available at: <http://www.archives.gov/federal-register/laws/paperwork-reduction/3506.html>

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- (ii) a functional description of the information to be collected;
- (iii) a plan for the collection of the information;
- (iv) a specific, objectively supported estimate of burden;
- (v) a test of the collection of information through a pilot program, if appropriate; and
- (vi) a plan for the efficient and effective management and use of the information to be collected, including necessary resources;

(B) ensure that each information collection--

- (i) is inventoried, displays a control number and, if appropriate, an expiration date;
- (ii) indicates the collection is in accordance with the clearance requirements of section 3507; and
- (iii) informs the person receiving the collection of information of--
  - (I) the reasons the information is being collected;
  - (II) the way such information is to be used;
  - (III) an estimate, to the extent practicable, of the burden of the collection;
  - (IV) whether responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and
  - (V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Suddenly requiring new reporting requirements for existing programs will require significant investment by Federal Agencies. Federal Agencies must develop and implement additional information collection and storage mechanisms that must comply with the regulatory requirements established by the PRA. While NAHB acknowledges that all Federal Agencies are familiar with and most likely have compliance strategies in place to respond to legislative requirements, these requirements will require not only a concise plan of action but also additional financial and staffing resources that are not currently available to the agencies. Compliance with the RPA will translate into significant delays and burdens for current and existing projects and programs.

CEQ must review this guidance and ensure that the associated requirements will not result in undue burden. NAHB strongly recommends that CEQ revisit and reduce the potential burden associated with this guidance prior to finalizing this guidance. Revisiting and revising the guidance will ensure the facilitation of effective implementation. Please do not hesitate to contact me at (202) 266-8538 or Larissa Mark at (202) 266-8157 if you have any questions or would like to discuss any of our recommendations.

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Best regards,

A handwritten signature in black ink, appearing to read "Susan Asmus". The signature is fluid and cursive, with the first name "Susan" being more prominent than the last name "Asmus".

Susan Asmus

Senior Vice President

*Environmental, Labor, Safety & Health Policy*

National Association of Home Builders